No. 88-1125

In the Supreme Court of the United States

OCTOBER TERM, 1989

JANE HODGESON, ET A.L.,
APPELLANTS

V.

MINNESOTA, ET A.L.
APPELLEES

PETITION FOR A WRIT OF CERTIOARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF FOR KENNETH FISHER
AS AMICUS CURIAE SUPPORTING APPELLEES

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MOTION FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE ON BEHALF OF RESPONDENT

Amicus hereby respectfully moves for leave to file a brief amicus curiae in the present case. Requested consent of parties is expected but has not yet been received and filed. When filed, it will make this motion unnecessary.

INTEREST OF AMICUS CURIAE

March 25, 1989, I participated in a rescue at the Los Angeles abortion clinic of Edward Allred, MD, who has been sued for malpractice hundreds of times, has paid millions in claims, has killed numerous women, and according to the LA Times owns a racing stable. I am an engineer with medical training.. Before the rescue, Mayor Bradley and police chief Gates had repeatedly been on TV warning rescuers not to come to LA and threatening to do more than merely

enforce the law if rescuers came to LA abortion chambers. When arrested, I informed the police that:

1] I was an trained in medicine;

2] they were using excessive force on my arm in an abnormal manner in accordance with the pain compliance techniques they used on hundreds on peaceful, non-resisting rescuers being arrested for alleged trespass; and

3] My arm was about to break.

About three seconds later they broke my arm.

I have not yet been allowed to go to trial. I may not go to trial, since everyone so far tried has been acquitted.

Nevertheless, the experience has — intensified my urgency relating to abortion. If efforts to rescue and to demonstrate the evil of legalized abortion can cause the LA police to act

as they did toward hundreds of peaceful rescuers on March 25, 1989, we are not as far from the jungle as I had hoped and as everyone believes.

You already must know President Reagan's public position on the prior Supreme Court invention of a "fundamental" right to abortion. You may know that he is the only recent President to publish a book ["Abortion and the Conscience of the Nation"] on a controversial political issue while in the White House. He and Abraham Lincoln are the only two Presidents to proclaim Presidential Proclamations proclaiming the rights of certain American individuals which were threatened because some claimed they were subhuman. In his book, President Reagan mentions British member of Parliament William Wilberforce who prayed with his small group for

decades to stop slavery, then finally saw success just before his death. From reading his book one gets the impression that Mr Reagan has prayed for 1 1/2 decades that you would reverse the prior Supreme Court's invented abortion right. Mr Reagan is elderly and has a body damaged by a would be assassin. I pray he will live to see you establish his "Personhood Proclamation" as law recognized by this Court, since it has already been recognized by Congress.

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SUMMARY OF ARGUMENT

The first part of this brief is President Reagan's book "Abortion and the Conscience of the Nation" setting forth his reasons as of 1984 why this honorable Court should reverse the invention of a fundamental right to abortion by a prior US Supreme Court. The second part explains 1 USC 1, passed by Congress to guarantee personhood for every individual [which of course includes preborn humans] and prior Court decisions recognizing the preeminent power of Congress to define ten different entities as persons and also to define four entities as persons for one purpose and non persons for another purpose. The theoretically interesting question is what is the duty of this Court when a prior Court has misread or as in the abortion situation ignored the intent of Congress, and the

present Congress (a previous Congress defined personhood) is too evenly balanced to pass additional legislation correcting the incorrect decision. A 1978 US Supreme Court decision sets forth the power and duty of this Court to correct the prior incorrect decision. This is even more so when the President has issued a Personhood Proclamation. (January 22, 1988). The President and this Court, lack legitimate power to create by definition persons and non persons. However, they have the power and the duty to use their power to officially proclaim a definition within the scope of a proclamation by the President and within the scope of an opinion by this Court when Congress has determined an entity to be entitled to the protection of personhood. The President has fulfilled his duty.

Abortion and the Conscience of the Nation

by

Ronald Reagan

The tenth anniversary of the Supreme Court decision in *Roe v. Wade* is a good time for us to pause and reflect. Our nationwide policy of abortion-on-demand through all nine months of pregnancy was neither voted for by our people nor enacted by our legislators – not a single state had such unrestricted abortion before the Supreme Court decreed it to be national policy in 1973. But the consequences of this judicial decision are now obvious: since 1973, more than 15 million unborn children have had their lives snuffed out by legalized abortions. That is over ten times the number of Americans lost in all our nation's wars.

Make no mistake, abortion-on-demand is not a right granted by the Constitution. No serious scholar, including one disposed to agree with the Court's result, has argued that the framers of the Constitution intended to create such a right. Shortly after the *Roe v. Wade* decision, Professor John Hart Ely, now Dean of Stanford Law School, wrote that the opinion "is not constitutional law and gives almost no sense of an obligation to try to be." Nowhere do the plain words of the Constitution even hint at a "right" so sweeping as to permit abortion up to the time the child is ready to be born. Yet that is what the Court ruled.

As an act of "raw judicial power" (to use Justice White's biting phrase), the decision by the seven-man majority in *Roe v. Wade* has so far been made to

stick. But the Court's decision has by no means settled the debate. Instead, *Roe v. Wade* has become a continuing prod to the conscience of the nation.

Abortion concerns not just the unborn child, it concerns every one of us. The English poet, John Donne, wrote: "... any man's death diminishes me, because I am involved in mankind; and therefore never send to know for whom the bell tolls; it tolls for thee."

We cannot diminish the value of one category of human life - the unborn - without diminishing the value of all human life. We saw tragic proof of this truism last year when the Indiana courts allowed the starvation death of "Baby Doe" in Bloomington because the child had Down's Syndrome.

Many of our fellow citizens grieve over the loss of life that has followed

Roe v. Wade. Margaret Heckler, soon after being nominated to head the largest department of our government, Health and Human Services, told an audience that she believed abortion to be the greatest moral crisis facing our country today. And the revered Mother Teresa, who works in the streets of Calcutta ministering to dying people in her world-famous mission of mercy, has said that "the greatest misery of our time is the generalized abortion of children."

Over the first two years of my administration I have closely followed and assisted efforts in Congress to reverse the tide of abortion – efforts of congressmen, senators and citizens responding to an urgent moral crisis. Regrettably, I have also seen the massive efforts of those who, under the banner of "freedom of choice," have so far blocked

every effort to reverse nationwide abortion-on-demand.

Despite the formidable obstacles before us, we must not lose heart. This is not the first time our country has been divided by a Supreme Court decision that denied the value of certain human lives. The *Dred Scott* decision of 1857 was not overturned in a day, or a year, or even a decade. At first, only a minority of Americans recognized and deplored the moral crisis brought about by denying the full humanity of our black brothers and sisters; but that minority persisted in their vision and finally prevailed. They did it by appealing to the hearts and minds of their countrymen, to the truth of human dignity under God. From their example, we know that respect for the sacred value of human life is too deeply engrained in the hearts of our people to

remain forever suppressed. But the great majority of the American people have not yet made their voices heard, and we cannot expect them to – any more than the public voice arose against slavery–*until* the issue is clearly framed and presented.

What, then, is the real issue? I have often said that when we talk about abortion, we are talking about two lives – the life of the mother and the life of the unborn child. Why else do we call a pregnant woman a mother? I have also said that anyone who doesn't feel sure whether we are talking about a second human life should clearly give life the benefit of the doubt. If you don't know whether a body is alive or dead, you would never bury it. I think this consideration itself should be enough for

all of us to insist on protecting the unborn.

The case against abortion does not rest here, however, for medical practice confirms at every step the correctness of these moral sensibilities. Modern medicine treats the unborn child as a patient. Medical pioneers have made great breakthroughs in treating the unborn – for genetic problems, vitamin deficiencies, irregular heart rhythms, and other medical conditions. Who can forget George Will's moving account of the little boy who underwent brain surgery six times during the nine weeks before he was born? Who is the *patient* if not that tiny unborn human being who can feel pain when he or she is approached by doctors who come to kill rather than to cure?

The real question today is not when human life begins, but, *What is the value*

of human life? The abortionist who reassembles the arms and legs of a tiny baby to make sure all its parts have been torn from its mother's body can hardly doubt whether it is a human being. The real question for him and for all of us is whether that tiny human life has a God-given right to be protected by the law – the same right we have.

What more dramatic confirmation could we have of the real issue than the Baby Doe case in Bloomington, Indiana? The death of that tiny infant tore at the hearts of all Americans because the child was undeniably a live human being – one lying helpless before the eyes of the doctors and the eyes of the nation. The real issue for the courts was *not* whether Baby Doe was a human being. The real issue was whether to protect the life of a human being who had Down's Syndrome, who

would probably be mentally handicapped, but who needed a routine surgical procedure to unblock his esophagus and allow him to eat. A doctor testified to the presiding judge that, even with his physical problem corrected, Baby Doe would have a "non-existent" possibility for "a minimally adequate quality of life"–in other words, that retardation was the equivalent of a crime deserving the death penalty. The judge let Baby Doe starve and die, and the Indiana Supreme Court sanctioned his decision.

Federal law does not allow federally-assisted hospitals to decide that Down's Syndrome infants are not worth treating, much less to decide to starve them to death. Accordingly, I have directed the Departments of Justice and Health and Human Services to apply civil rights regulations to protect handicapped

newborns. All hospitals receiving federal funds must post notices which will clearly state that failure to feed handicapped babies is prohibited by federal law.

The basic issue is whether to value and protect the lives of the handicapped, whether to recognize the sanctity of human life. This is the same basic issue that underlies the question of abortion.

The 1981 Senate hearings on the beginning of human life brought out the basic issue more clearly than ever before. The many medical and scientific witnesses who testified disagreed on many things, but not on the *scientific* evidence that the unborn child is alive, is a distinct individual, or is a member of the human species. They did disagree over the *value* question, whether to give value to

a human life at its early and most vulnerable stages of existence.

Regrettably, we live at a time when some persons do *not* value all human life. They want to pick and choose which individuals have value. Some have said that only those individuals with "consciousness of self" are human beings. One such writer has followed this deadly logic and concluded that "shocking as it may seem, a newly born infant is not a human being."

A Nobel Prize winning scientist has suggested that if a handicapped child "were not declared fully human until three days after birth, then all parents could be allowed the choice." In other words, "quality control" to see if newly born human beings are up to snuff.

Obviously, some influential people want to deny that every human life has

intrinsic, sacred worth. They insist that a member of the human race must have certain qualities before they accord him or her status as a "human being."

Events have borne out the editorial in a California medical journal which explained three years before *Roe v. Wade* that the social acceptance of abortion is a "defiance of the long-held Western ethic of intrinsic and equal value for every human life regardless of its stage, condition, or status."

Every legislator, every doctor, and every citizen needs to recognize that the real issue is whether to affirm and protect the sanctity of all human life, or to embrace a social ethic where some human lives are valued and others are not. As a nation, we must choose between the sanctity of life ethic and the "quality of life" ethic.

I have no trouble identifying the answer our nation has always given to this basic question, and the answer that I hope and pray it will give in the future. America was founded by men and women who shared a vision of the value of each and every individual. They stated this vision clearly from the very start in the Declaration of Independence, using words that every schoolboy and schoolgirl can recite:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness.

We fought a terrible war to guarantee that one category of mankind – black people in America—could not be denied the inalienable rights with which their

Creator endowed them. The great champion of the sanctity of all human life in that day, Abraham Lincoln, gave us his assessment of the Declaration's purpose. Speaking of the framers of that noble document, he said:

This was their majestic interpretation of the economy of the Universe. This was their lofty, and wise, and noble understanding of the justice of the Creator to His creatures. Yes, gentlemen, to all His creatures, to the whole great family of man. In their enlightened belief, nothing stamped with the divine image and likeness was sent into the world to be trodden on ... They grasped not only the whole race of man then living, but they reached forward and seized upon the farthest posterity. They erected a beacon to guide their children and their children's children, and the

countless myriads who should inhabit the earth in other ages.

He warned also of the danger we would face if we closed our eyes to the value of life in any category of human beings:

I should like to know if taking this old Declaration of Independence, which declares that all men are equal upon principle and making exceptions to it where will it stop. If one man says it does not mean a Negro, why not another say it does not mean some other man?

When Congressman John A. Bingham of Ohio drafted the Fourteenth Amendment to guarantee the rights of life, liberty, and property to all human beings, he explained that *all* are "entitled to the protection of American law, because its divine spirit of equality declares that all men are created equal." he said the

rights guaranteed by the amendment would therefore apply to "any human being." Justice William Brennan, in another case decided only the year before *Roe v. Wade*, referred to our society as one that "strongly affirms the sanctity of life."

Another William Brennan — not the Justice—has reminded us of the terrible consequences that can follow when a nation rejects the sanctity of life ethic:

The cultural environment for a human holocaust is present whenever any society can be misled into defining individuals as less than human and therefore devoid of value and respect.

As a nation today, we have *not* rejected the sanctity of human life. The American people have not had an opportunity to express their view on the sanctity of human life in the unborn. I am convinced that Americans do not want to

play God with the value of human life. It is not for us to decide who is worthy to live and who is not. Even the Supreme Court's opinion in *Roe v. Wade* did not explicitly reject the traditional American idea of intrinsic worth and value in all human life; it simply dodged this issue.

The Congress has before it several measures that would enable our people to reaffirm the sanctity of human life, even the smallest and the youngest and the most defenseless. The Human Life Bill expressly recognizes the unborn as human beings and accordingly protects them as persons under our Constitution. This bill, first introduced by Senator Jesse Helms, provided the vehicle for the Senate hearings in 1981 which contributed so much to our understanding of the real issue of abortion.

The Respect Human Life Act, just introduced in the ninety-eighth Congress, states in its first section that the policy of the United States is "to protect innocent life, both before and after birth." This bill, sponsored by congressman Henry Hyde and Senator Roger Jepsen, prohibits the federal government from performing abortions or assisting those who do so, except to save the life of the mother. It also addresses the pressing issue of infanticide which, as we have seen, flows inevitably from permissive abortion as another step in the denial of the inviolability of innocent human life.

I have endorsed each of these measures, as well as the more difficult route of constitutional amendment, and I will give these initiatives my full support. Each of them, in different ways,

attempts to reverse the tragic policy of abortion-on-demand imposed by the Supreme Court ten years ago. Each of them is a decisive way to affirm the sanctity of human life.

We must all educate ourselves to the reality of the horrors taking place. Doctors today know that unborn children can feel a touch within the womb and that they respond to pain. But how many Americans are aware that abortion techniques are allowed today, in all fifty states, that burn the skin of a baby with a salt solution, in an agonizing death that can last for hours?

Another example: two years ago, the *Philadelphia Inquirer* ran a Sunday special supplement on "The Dreaded Complication." The "dreaded complication" referred to in the article – the complication feared by doctors who per-

form abortions—is the *survival* of the child despite all the painful attacks during the abortion procedure. Some unborn children *do* survive the late-term abortions the Supreme Court has made legal. Is there any question that these victims of abortion deserve our attention and protection? Is there any question that those who *don't* survive were living human beings before they were killed?

Late-term abortions, especially when the baby survives, but is then killed by starvation, neglect, or suffocation, show once again the link between abortion and infanticide. The time to stop both is now. As my administration acts to stop infanticide, we will be fully aware of the real issue that underlies the death of babies before and soon after birth.

Our society has, fortunately, become sensitive to the rights and special needs

of the handicapped, but I am shocked that physical or mental handicaps of newborns are still used to justify their extinction. This administration has a Surgeon General, Dr. C. Everett Koop, who has done perhaps more than any other American for handicapped children, by pioneering surgical techniques to help them, by speaking out on the value of their lives, and by working with them in the context of loving families. You will not find his former patients advocating the so-called "quality-of-life" ethic.

I know that when the true issue of infanticide is placed before the American people, with all the facts openly aired, we will have no trouble deciding that a mentally or physically handicapped baby has the same intrinsic worth and right to life as the rest of us. As the New Jersey Supreme Court said two decades

ago, in a decision upholding the sanctity of human life, "a child need not be perfect to have a worthwhile life."

Whether we are talking about pain suffered by unborn children, or about late-term abortions, or about infanticide, we inevitably focus on the humanity of the unborn child. Each of these issues is a potential rally point for the sanctity of life ethic. Once we as a nation rally around any one of these issues to affirm the sanctity of life, we will see the importance of affirming this principle across the board.

Malcolm Muggeridge, the English writer, goes right to the heart of the matter: "Either life is always and in all circumstances sacred, or intrinsically of no account; it is inconceivable that it should be in some cases the one, and some the other." The sanctity of innocent hu-

man life is a principle that Congress should proclaim at every opportunity.

It is possible that the Supreme Court itself may overturn its abortion rulings. We need only recall that in *Brown v. Board of Education* the court reversed its own earlier "separate-but-equal" decision. I believe if the Supreme Court took another look at *Roe v. Wade*, and considered the real issue between the sanctity of life ethic and the quality of life ethic, it would change its mind once again.

As we continue to work to overturn *Roe v. Wade*, we must also continue to lay the groundwork for a society in which abortion is not the accepted answer to unwanted pregnancy. Pro-life people have already taken heroic steps, often at great personal sacrifice, to provide for unwed mothers. I recently spoke about a

young pregnant woman named Victoria, who said, "In this society we save whales, we save timber wolves and bald eagles and Coke bottles. Yet, everyone wanted me to throw away my baby." She has been helped by Sav-a-Life, a group in Dallas, which provides a way for unwed mothers to preserve the human life within them when they might otherwise be tempted to resort to abortion. I think also of House of His Creation in Coatesville, Pennsylvania, where a loving couple has taken in almost two hundred young women in the past ten years. They have seen, as a fact of life, that the girls are *not* better off having abortions than saving their babies. I am also reminded of the remarkable Rossow family of Ellington, Connecticut, who have opened their hearts and their home to nine handicapped adopted and foster children.

The Adolescent Family Life Program, adopted by Congress at the request of Senator Jeremiah Denton, has opened new opportunities for unwed mothers to give their children life. We should not rest until our entire society echoes the tone of John Powell in the dedication of his book, *Abortion: The Silent Holocaust*, a dedication to every woman carrying an unwanted child: "Please believe that you are not alone. There are many of us that truly love you, who want to stand at your side, and help in any way we can." And we can echo the always-practical woman of faith, Mother Teresa, when she says, "If you don't want the little child, that unborn child, give him to me." We have so many families in America seeking to adopt children that the slogan "every child is a wanted child" is now the emptiest of all reasons to tolerate abortion.

I have often said we need to join in prayer to bring protection to the unborn. Prayer and action are needed to uphold the sanctity of human life. I believe it will not be possible to accomplish our work, the work of saving lives, "without being a soul prayer." The famous British member of Parliament William Wilberforce prayed with his small group of influential friends, the "Clapham Sect," for *decades* to see an end to slavery in the British empire. Wilberforce led that struggle in Parliament, unflaggingly, because he believed in the sanctity of human life. He saw the fulfillment of his impossible dream when Parliament outlawed slavery just before his death.

Let his faith and perseverance be our guide. We will never recognize the true value of own lives until we affirm the value in the life of others, a value

of which Malcolm Muggeridge says: " however low it flickers or fiercely burns, it is still a Divine flame which no man dare presume to put out, be his motives ever so humane and enlightened."

Abraham Lincoln recognized that we could not survive as a free land when some men could decide that others were not fit to be free and should therefore be slaves. Likewise, we cannot survive as a free nation when some men decide that others are not fit to live and should be abandoned to abortion or infanticide. My administration is dedicated to the preservation of America as a free land, and there is no cause more important for preserving that freedom than affirming the transcendent right to life of all human beings, the right without which no other rights have any meaning.

DEFINITION OF PERSONHOOD

Congress passed Title 1 USC Section 1 in 1947, then amended it in 1948 (after hearing Nazi horror stories defining human individuals as non persons) to add the word "individual" to the definition of personhood in 1 USC 1. Congress has thus decided the abortion issue by defining "person" to include " individual", but 1 USC 1 is being ignored. Many, perhaps hundreds of US Supreme Court cases hold that Congress has power to define entities as persons or non persons for various purposes and even has power to define the same entity as a person for one purpose and as a non person for other purposes pursuant to the Fourteenth Amendment, Section 5. Congress has power to define personhood. Congress has defined "person" to include "individuals" which in turn includes pre

born humans, so that under 1 USC 1, the term "person" must include preborn humans.

IF THE PRE BORN HUMAN IS A PERSON, ABORTION IS UNLAWFUL

> "The appellee and certain amici argue that the fetus is a "person" within the language and meaning of the Fourteenth Amendment....If this suggestion of personhood is established,...the fetus' right to life is then guaranteed specifically by the Amendment."

Roe v Wade 410 US 113 at 156, 157, 35 L Ed 2d 147, 93 S Ct 705.

Roe v Wade correctly stated that states had no power to impose a state definition of personhood on the Federal Government or courts, but in no way limited the power of Congress to determine personhood of the pre born

human.

Roe v Wade was an ordinary case between two ordinary parties, even though the result was substantial. In determining whether the pre born human was a person, all the Court did was rely on the arguments submitted, [which did not include "individual or 1 USC 1], view history, and look for a definition of "person" in the US Constitution which Constitution does not define any terms therein other than describing units of government. The question of the individuality of the pre born human was never raised or considered or decided or disposed of in Roe v Wade or any other US Supreme Court abortion opinion. The ~~US~~ Supreme Court has since Roe v Wade relied on 1 USC 1 to determine personhood.

Numerous revered Americans, founding fathers and others have pointed to the

obvious defect. Abraham Lincoln in his first Inaugural Address shortly after having been elected in part because of a US Supreme Court decision separating US Constitutional protection re citizens from certain humans belonging to the "wrong" race, said it as follows:

> "...the candid citizen must confess that if the policy of the government, upon vital questions affecting the whole people, is to be irrevocably fixed by decisions of the Supreme Court, the instant they are made, in ordinary litigation between parties in personal actions, the people will have ceased to be their own rulers, having to ~~that~~ extent practically resigned their government into the hands of that eminent tribunal."

This can, of course, be read as a

criticism of Substantive Due Process, particularly as applied by recent US Supreme Courts in areas of interest to Christians.

The debates relating to the Fourteenth Amendment said much the same and the Congress that later passed the Fourteenth Amendment tried unsuccessfully to make certain that Lincoln's fear would not be the law by adding Section 5 to the Fourteenth Amendment as follows:

"The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

USUAL WAY TO DETERMINE PERSONHOOD-LOOK TO CONGRESSIONAL INTENT

In Roe v Wade, the US Supreme Court looked in a unique and probably wrong way and to a unique and probably wrong place for a definition of personhood. There are probably hundreds of US Supreme Court

opinions which have required the Court to determine whether an entity was or was not a person. On information and belief, in each of these cases other than Roe V Wade and its progeny, the Court has followed the same procedure, the procedure required by the Fourteenth Amendment as interpreted by the US Supreme Court in hundreds of non abortion cases requiring a determination of whether or not an entity is a person.

In none of these other cases has the Court merely looked where it looked in Roe v Wade. In each of these other cases, the Court has looked instead to legislation enacted into law by Congress because Congress alone has the power to enforce the Fourteenth Amendment and therefore determine and define personhood "by appropriate legislation".

The correct general rule re

determining personhood has been stated by the US Supreme Court numerous times since Roe v Wade. The rule is that the US Supreme Court does not determine personhood. The US Supreme Court determines and applies the intent of Congress to the particular situation in ruling in a case requiring a determination of whether an entity is a person. For example:

> "The petitioners contend that the word 'person' was clearly understood by Congress when it passed the Sherman Act to exclude sovereign governments. The word 'person,' however, is not a term of art with a fixed meaning wherever it is used....The Court considered the question whether the United States was a 'person' entitled to sue for treble damages as one to be decided

> not by a 'strict construction of the words of the Act, nor by the application of artificial canons of construction,' but by analyzing the language of the statute 'in the light, not only of the policy intended to be served by the enactment, but, as well, by all other available aids to construction....As in Cooper, the Court did not rest its decision upon a bare analysis of the word 'person,' but relied instead upon the entire statutory context to hold that Georgia was entitled to sue."
> "'We can perceive no reason for believing that Congress wanted to deprive a [foreign nation], as purchaser of commodities shipped in [international] commerce, of the civil remedy of treble damages which

is available to other purchasers who suffer through violation of the Act...Nothing in the Act, its history, or its policy, could justify so restrictive a construction of the word 'person' in Section 7....'"

Pfizer Inc. v India 434 US 308 at 316-318, 54 L Ed 2d 563, 98 S Ct 584 (1978)

WHEN SHOWN THAT IT MISINTERPRETED CONGRESSIONAL INTENT, THE US SUPREME COURT WILL OVERRULE A PREVIOUS PERSONHOOD DECISION

The pattern of US Supreme Court decisions relating to determining whether an entity is a person and the willingness of the Court to reverse itself when an earlier US Supreme Court decision is shown to be based on flawed scholarship is further highlighted in another 1978

case reversing an earlier US Supreme Court 42 USC 1983 decision as follows:

"In Monroe v Pape, we held that 'Congress did not undertake to bring municipal corporations within the ambit of [Sec 1983].' 365 US, at 187, 5 L Ed 2d 492, 81 S Ct 473. The sole basis for this conclusion was an inference drawn from Congress' rejection of the 'Sherman amendment' to the bill which became the Civil Rights Act of 1871, 17 Stat 13-the precursor of Sec 1983-which would have held a municipal corporation liable for damage done to the person or property by private persons 'riotously and tumultuously assembled.' 8 Cong Globe, 42d Cong, 1st Sess, 749 (1871) (hereinafter Globe). Although the Sherman Amendment did not seek to amend Sec

1 of the Act, which is now Sec 1983, and although the nature of the obligation created by that amendment was vastly different from that created by Sec 1, the Court nonetheless concluded in Monroe that Congress must have meant to exclude municipal corporations from the coverage of Sec 1 because "the House [in voting against the Sherman Amendment] had solemnly decided that in their judgement Congress had no constitutional power to impose any obligation upon county and town organizations, the mere instrumentality for the administration of state law." 365 US, at 190, 5 L Ed 2d 492, 81 S Ct 473 (emphasis added), quoting Globe 804 (Rep Poland). This statement, we thought, showed that Congress

doubted its 'constitutional power...to impose civil liability on municipalities,' 365 US, at 190, 5 L Ed 2d 492, 81 S Ct 473 (emphasis added), and that such doubt would have extended to any type of civil liability. 9

436 US 665

A fresh analysis of debate on the Civil Rights Act of 1871, and particularly of the case law which each side mustered in its support, shows, however, that Monroe incorrectly equated the 'obligation' of which Representative Poland spoke with 'civil liability.'...

436 US 683

[1c] From the foregoing discussion, it is readily apparent that nothing said in debate on the Sherman amendment would have prevented

holding a municipality liable under Sec 1 of the Civil Rights Act for its own violations of the Fourteenth Amendment. The question remains, however, whether the general language describing those to be liable under Sec 1-'any person'-covers more than natural persons. An examination of the debate on Sec 1 and application of appropriate rules of construction show unequivocally that Sec 1 was intended to cover legal as well as natural persons.

436 US 690

[1d, 2a, 3a, 4a, 5,6] Our analysis of the legislative history of the Civil Rights Act of 1871 compels the conclusion that Congress did intend municipalities and other local government units to be included among those persons to whom Sec 1983

applies."

Monell v New York City Dept of Soc Serv 436 US 658 at 664, 665, 683, 690, 56 L Ed 2d 611, 98 S Ct 2018 (1978)

THE SAME ENTITY CAN BE A PERSON FOR ONE PURPOSE BUT NOT ANOTHER SO THE DEFINITION OF ROE V WADE, IF IT IS STILL LAW,WHILE ENTITLED TO CONSIDERATION, IS NOT DETERMINATIVE

A criminal defendant is entitled to have the case against him proven beyond a reasonable doubt. In interpreting a law, a criminal defendant has the benefit of presumptions not given to the prosecution. Accordingly, it is conceivable that a law interpreted one way to benefit a criminal defendant might be interpreted another way in a different case. That is the situation in the abortion area. Roe ruled in favor of a criminal defendant. The situation is

different for any other situation, so that the preborn can be given the advantages normally given such respondents, including more normal interpretations of law. Examples of the same entity being considered a person for one purpose and not for another include:

[1] paper persons such as corporations which are persons for substantially all purposes but cannot use the self incrimination protection given natural persons; US v White (1944) 322 US 694, 88 L Ed 1542, 64 S Ct 1248.

[2] States are not persons, Fifth Amendment Due Process Clause South Carolina v Katzenbach (1966) 383 US 301, 15 L Ed 2d 769, 86 S Ct 803, but States are persons under Sec 7 of Sherman Act, now Clayton act 15 USCS Sec 15 Georgia v Evans (1942) 316 US 159, 86 L Ed 1346, 62 S Ct 972 and Hawaii v Standard Oil Co

(1972) 405 US 251, 31 L Ed 2d 184, 92 S Ct 885.

[3] Municipalities are persons Lafayette v Louisiana Power and Light Co (1978) 435 US 389, 55 L Ed 2d 364, 98 S Ct 1123, but they are not under the 1978 Bankruptcy Act. In like manner, See Monell supra.

[4] The US is not a person; United States v Cooper Corp (1941) 312 US 600, 85 L Ed 1071, 61 S Ct 742, but the US is a person Far East Conference v United States (1942) 342 US 570, 96 L Ed 576, 72 S Ct 492.

There are other similar examples.

CONGRESS HAS THE POWER TO DEFINE AS PERSON PRACTICALLY ANY ENTITY

The power given by Section 5 of the Fourteenth Amendment insofar as it applies to the issues herein has not on information and belief been limited in

any way by any case.

Among the non human entities defined as persons are:

[1] Corporations, supra;

[2] States, supra;

[3] Municipalities, supra;

[4] The United States, supra;

[5] Railroads International Brotherhood of Teamsters, etc v New York, N H & H R Co (1956) 350 US 155, 100 L Ed 166, 76 S Ct 227;

[6] Foreign Nations, Pfizer, supra;

[7] Labor Unions, United Mine Workers v Coronado Coal Co (1922) 259 US 344, 66 L Ed 975, 42 S Ct 570;

[8] An unincorporated association of manufacturers Brown v United States (1928) 276 US 134, 72 L Ed 500, 48 S Ct 288;

[9] A corporate officer, United States v Wise (1962) 370 US 405, 8 Led 2d

590, 82 S Ct 1354; and

[10] A political party, United States v Shirey (1959) 359 US 255, 3 L Ed 2d 789, 79S Ct 746.

PERSONHOOD IS DETERMINED BY 1 USC 1 UNLESS A MORE PARTICULAR DEFINITION IN A SPECIALIZED CODE SECTION IS INTENDED BY CONGRESS TO DETERMINE THE DEFINITION OF PERSONHOOD FOR A LIMITED PURPOSE

1 USC 1 states in applicable part:

"In determining the meaning of any Act of Congress, unless the context indicates otherwise-...the words 'person' and 'whoever' include...individuals".

There are perhaps 100 US Supreme Court cases agreeing with the heading of the present section of this argument, and none explicitly disagreeing. Roe, supra, does not challenge the pre eminence of 1 USC 1 even over the US Supreme Court in determining personhood, but in a much

criticized Substantive Due Process opinion merely ignores 1 USC 1 which was not cited in argument to the Court.

PRE BORN HUMANS ARE DEFINED AS INDIVIDUALS BOTH BY MEDICAL DICTIONARIES AND BY LARGE GENERAL PURPOSE DICTIONARIES

The position that preborn humans are persons is a two step logic set. The preceding shows that the word "person" includes individuals in determining the meaning of any Act of Congress, Act including the Fourteenth Amendment. Pre born humans are defined as individuals by all medical dictionaries and large general purpose dictionaries. The definition has not changed in any — material or relevant way during any time material to the present argument.

"Individual" is not a medical term of art and accordingly, is not directly

found in medical dictionaries such as Stedman's or Dorland's. What is found, however, is a definition of the newly fertilized human ovum as a zygote, which in turn is defined as an individual.

CONCLUSION

There is no real dispute over any of the necessary elements of the previous argument. Congress has the power to define "person" to include "individuals" and has done sb. The term "individual" includes pre born humans. It follows that if normal legal rules are followed, the term "person" includes pre born humans by act of Congress which is sufficient. Accordingly, this Court should reverse Roe v Wade which ignored the normal 1 USC 1 definition of person.

DATED 9/28/89

Respectfully submitted,

ROBERT L SASSONE, Attorney for amicus

NO 88-1125
IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1989

JANE 'HODGSON, MD, ET AL.
Petitioners,
v.
THE STATE OF MINNESOTA, ET AL.
Respondents,

Affidavit of mailing of amicus brief copies, Rule 28.2
State of California)ss.
City of Santa Ana, County of Orange)

Robert L Sassone, being first duly sworn on his oath deposes and says:

Robert L Sassone is a member of the bar of the United States Supreme Court admitted October 26, 1971. To his knowledge, on October 11, 1989, within the particular time and permitted time for serving of said amicus brief pursuant to Rule 28.2, he deposited in the United States Mailbox at Santa Ana, CA 92701 pursuant to Rule 28.2 with first class postage prepaid 40 copies of the attached amicus brief in the present case properly addressed to the Clerk of the United States Supreme Court and three copies of said amicus brief to each party addressed as follows:

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